Brenna E. Erlbaum (SBN: 296390)
PILLAR LAW GROUP, APLC
150 S. Rodeo Drive, Suite 260
Beverly Hills, CA 90212
[phone]: (310) 999-1000
Brenna.B@pillar.law
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO

MALIBU MEDIA, LLC, Plaintiff, vs. KEVIN PETERSON, Defendant.	Case Number: 3:16-CV-00786-JLS-NLS **PLAINTIFF'S MOTION TO DISMISS DEFENDANT'S COUNTERCLAIM**
KEVIN PETERSON Counterclaimaint v. MALIBU MEDIA, LLC Counterdefendant	

PLAINTIFF'S MOTION TO DISMISS DEFENDANT'S COUNTERCLAIM

I. INTRODUCTION

Defendant Kevin Peterson's Counterclaim for Declaratory Relief fails as a matter of law and should be dismissed. Defendant's Counterclaim is repetitious and unnecessary because it merely restates issues that are already before this Court; namely, whether Defendant is liable for the alleged infringement. Numerous courts have dismissed counterclaims that are, in truth, answers or defenses since they are not independent pieces of litigation. For these reasons, as explained more fully below, the Court should dismiss Defendant's counterclaim.

II. LEGAL STANDARD

"A Rule 12(b)(6) motion tests the sufficiency of the complaint." *Johnson v. Homecomings Fin.,* 2012 WL 1357675, at *1 (S.D. Cal. 2012) citing *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). "To survive a motion to dismiss, a complaint must allege 'enough facts to state a claim to relief that is plausible on its face." *Faulkner v. ADT Sec. Servs., Inc.* 706 F.3d 1017, 1019 (9th Circ. 2013) quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955 (2007). "A claim has facial plausibility when 'the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Id.* A party must allege sufficient factual matter to nudge its claims across the line from conceivable to plausible. *See Twombly*, 550 at 570, 127 S. Ct. at 1974 (2007). "Dismissal is warranted under Rule 12(b)(6) where the complaint lacks a congnizable legal theory…Alternatively, a complaint maybe dismissed where it…fails to plead essential facts under that theory." *Hennington v. F.B.I.,* 2009 WL 69313, at *2 (S.D. Cal. 2009) citing *Robertson v. Dean Witter Reynolds, Inc.,* 749 F.2d 530, 534 (9th Cir. 1984).

III. ARGUMENT

Defendant's counterclaim fails and should be dismissed as an inappropriate "repackaging" of his denial of infringement. Specifically, Defendant's Counterclaim states:

1. Plaintiff has alleged a copyright infringement claim against Defendant based on the

allegation that the Defendant has downloaded or otherwise shared numerous works that purportedly belong to Plaintiff.

2. The court has subject matter jurisdiction over the Defendant's counterclaims pursuant to 28 U.S.C. §§1331, 1338, 1367, 2201, and 2202 as the counterclaims are so related to the claims in the original action that they form part of the same case or controversy and arise out of common facts, transactions, or occurrences.
3. Defendant has denied that they are responsible for downloading or otherwise sharing the works at issue in this suit.
4. As such, a justiciable case and controversy now exists with regard to the allegations that the Defendant as infringed Plaintiff's copyrights. (CM/ECF 12 p.10-11).

Defendant's counterclaim is nothing more than a denial and should be dismissed because it adds nothing more the lawsuit. "The Declaratory Judgment Act gives the Court the authority to declare the rights and legal relations of interested parties, but not a duty to do so." *Strickland v. Globalstar, Inc.* 2008 WL 2050990, at *2 (N.D. Cal. 2008). Thus, "if a district court, in the sound exercise of its judgment, determines after a complaint is filed that a declaratory judgment will serve no useful purpose, it cannot be incumbent upon that court to proceed to the merits before…dismissing the action." *Wilton v. Seven Falls Co.,* 515 U.S. 277, 288, 115 S.Ct. 2137 (1995).

"Federal courts do not have a duty to grant declaratory judgment; therefore, it is within a district court's discretion to dismiss an action for declaratory judgment." *Leadsinger, Inc. v. BMG Music Pub.,* 512 F.3d. 522, 533 (9th Cir. 2008). In addressing this issue, this Court found that "[n]umerous courts have dismissed declaratory relief counterclaims in electronic copyright infringement actions where the question of whether defendant infringed plaintiff's rights will be decided by plaintiff's claim." *Atl. Recording Corp. v. Serrano*, No. 07-CV-1824 W (JMA), 2007 U.S. Dist. LEXIS 95203, at *11 (S.D. Cal. Dec. 27, 2007)(dismissing Defendant's declaratory judgment claim as 'redundant and uncessary.'). *See also Tenneco Inc. v. Saxony Bar & Tube, Inc.,* 776 F.2d 1375, 1379 (7th Cir. 1985) ("The label 'counterclaim' has no magic. What is really an answer or defense to a suit does not become an independent piece of litigation because of its label."); *Rayman v. Peoples Sav. Corp.,* 735 F. Supp. 842, 852 (N.D. Ill. 1990) (dismissing a counterclaim that mirrors an affirmative defense because "[i]t adds nothing to the pleadings…already put before this Court."); *Arista Records LLC v. Usenet.com, Inc.,* 2008 Wl 4974823 (S.D.N.Y 2008) (dismissing counterclaims that "add nothing to the affirmative defenses" and "do not present an independent case or controversy that would survive a dismissal of Plaintiff's infringement claim."); Fed. R. Civ. P. 8©(2) ("If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated…[.]").

This rule is founded on sound policy because otherwise Plaintiff would have to answer a declaratory action denying everything and referring back to the complaint. Also, it would confuse a jury if the matter proceeds to that stage. Moreover, the declaration s simply unnecessary because the Court will decide the common copyright infringement issue unless the parties settle or Plaintiffs withdraw their Complaint. If Defendant wins at trial, the jury's verdict will find him not liable and validate either the denial or liability or affirmative defenses already pleaded.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court dismiss Defendant's counterclaim.

Respectfully submitted,

PILLAR LAW GROUP, APLC

/s/ Brenna Erlbaum
Brenna E. Erlbaum (SBN: 296390)
150 S. Rodeo Dr., Suite 260
Beverly Hills, CA 90212
[phone]: (310) 999-1000
Brenna.B@pillar.law
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2016, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that service was perfected on all counsel of record and interested parties through this system.

By: /s/ *Brenna Erlbaum*